

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

OWCP accepted that on January 3, 1983 appellant, then a 33-year-old painter, sustained injuries to his left elbow, right shin, and back when he fell through a dislodged grate while in the performance of duty. Appellant stopped work on January 17, 1983. OWCP accepted his claim for contusions of the left elbow and right shin, back strain, and herniated nucleus pulposus at L5-S1. It paid wage-loss compensation and medical benefits beginning January 22, 1983.

In July 1989, appellant was referred for vocational rehabilitation. He returned to work as a grounds keeper in August 1989² and then as a truck driver on July 21, 1992. Appellant stopped work on April 5, 1994. In May 4, 1994, OWCP reduced his compensation based on his actual earnings in his capacity as a truck driver with a private company. Appellant continued to receive wage-loss compensation at the reduced amount and OWCP placed him on the periodic rolls, effective June 16, 2002.

In an informational letter dated December 13, 2011, OWCP informed appellant that FECA required his wage-loss compensation benefits to be reduced if he began receiving Social Security Administration (SSA) retirement benefits based on his age and federal service. It notified him of his obligation to report receipt of such retirement benefits to avoid an overpayment of compensation. In a Form CA-1032 dated December 11, 2012, appellant informed OWCP that he was receiving SSA benefits as part of an annuity for federal service.

In CA-1032 forms dated December 10, 2013, December 19, 2014, January 4 and December 12, 2016, and January 5, 2018, appellant indicated “No” that he was not receiving SSA benefits as part of an annuity for federal service. On the Form CA-1032 that he signed on January 5, 2018 appellant reported that he was receiving “retirement benefit.”

On January 16, 2018 OWCP provided SSA with a Federal Employees Retirement System (FERS)/SSA dual benefits calculation form. On February 8, 2018 SSA submitted the completed form, which showed SSA benefit rates with a FERS offset and without a FERS offset from January 2012 through December 2017. Beginning January 2012, appellant’s SSA rate, with FERS was \$525.20 and without FERS was \$506.20. Beginning December 2012, the SSA rate with FERS was \$534.10 and \$514.80 without FERS. Beginning December 2013, the SSA rate with FERS was \$542.10 and \$522.50 without FERS. Beginning December 2014, the SSA rate with FERS was \$551.30 and \$531.30 without FERS. Beginning December 2015, the SSA rate with FERS was \$551.30 and \$531.30 without FERS. Beginning December 2016, the SSA rate with FERS was \$552.90 and \$532.90 without FERS. Beginning December 2017, the SSA rate with FERS was \$563.90 and \$543.60 without FERS.

In a letter dated March 5, 2018, OWCP advised appellant that he had been receiving a prohibited dual benefit. It noted that the portion of SSA benefits earned as a federal employee was part of his retirement and that the receipt of wage-loss compensation under FECA and federal

² Appellant was terminated from his employment with the employing establishment effective November 9, 1989.

retirement was prohibited. OWCP adjusted appellant's FECA benefits to account for his SSA offset, which reduced his FECA wage-loss compensation payments from \$2,143.00 to \$2,124.26.³

On March 16, 2018 OWCP issued a preliminary determination that appellant received an overpayment of compensation in the amount of \$1,465.20 because he received FECA wage-loss compensation benefits concurrently with SSA retirement benefits from January 1, 2012 through March 3, 2018. It provided a calculation of the overpayment. OWCP recommended that appellant be found without fault in the creation of the overpayment because he was not aware nor could he reasonably have been expected to know that it had paid compensation incorrectly. It requested that he submit a completed overpayment recovery questionnaire (Form OWCP-20) to determine a fair repayment method. OWCP also noted that appellant could request waiver of recovery of the overpayment. It provided him with his appeal rights and afforded 30 days for a response.

No response or additional evidence was received.

By decision dated June 15, 2018, OWCP determined that appellant had received an overpayment of compensation in the amount of \$1,465.20 because a portion of appellant's SSA benefits was based on credits earned while working in the Federal Government and that this portion of his SSA benefit was a prohibited dual benefit. It further found that he was not at fault in the creation of the overpayment, but denied waiver of recovery of the overpayment. OWCP noted that no response had been received following the preliminary determination. It required recovery of the overpayment by deducting \$488.40 every 28 days from appellant's continuing wage-loss compensation payments.

LEGAL PRECEDENT -- ISSUE 1

Section 8102(a) of FECA provides that the United States shall pay compensation for the disability of an employee resulting from personal injury sustained while in the performance of his or her federal employment.⁴ Section 8116 limits the right of an employee to receive compensation: While an employee is receiving compensation, he or she may not receive salary, pay, or remuneration of any type from the United States.⁵

Section 10.421(d) of the implementing regulations requires that OWCP reduce the amount of compensation by the amount of any SSA age-based benefits that are attributable to federal service of the employee.⁶ FECA Bulletin No. 97-09 provides that FECA benefits have to be adjusted for the FERS portion of SSA benefits because the portion of the SSA benefit earned as a

³ The amount of the SSA offset was noted as \$18.74.

⁴ 5 U.S.C. § 8102(a).

⁵ *Id.* at § 8116.

⁶ 20 C.F.R. § 10.421(d); *see L.J.*, 59 ECAB 264 (2007).

federal employee is part of the FERS retirement package, and the receipt of FECA benefits and federal retirement concurrently is a prohibited dual benefit.⁷

Section 404.409 of SSA regulations provides that for individuals born from 1943 to 1954, full retirement age is 66 years.⁸

ANALYSIS -- ISSUE 1

The Board finds that OWCP properly determined that appellant received an overpayment of compensation in the amount of \$1,465.20 because he concurrently received SSA retirement benefits while receiving FECA benefits for the period January 1, 2012 through March 3, 2018. Appellant has not challenged the fact or amount of overpayment. The record indicates that, while appellant was receiving compensation for total disability under FECA, he was also receiving SSA age-based retirement benefits. A claimant cannot receive both compensation for wage-loss and SSA age-based benefits attributable to federal service for the same period.⁹ Consequently, the fact of overpayment has been established.

To determine the amount of overpayment, the SSA provided appellant's SSA rate with FERS and without FERS during the applicable period. OWCP determined that appellant received a total of \$163,876.50 in wage-loss compensation during the period from January 1, 2012 to March 3, 2018. Based on the information provided by SSA, OWCP calculated that appellant should have received a total of \$162,411.30 in wage-loss compensation had OWCP applied the proper SSA rate with FERS offset, which resulted in an overpayment of \$1,465.20, during the applicable period. The Board has reviewed OWCP's calculations of the dual benefits that appellant received and finds that it properly determined that he received a \$1,465.20 overpayment of compensation.

LEGAL PRECEDENT -- ISSUE 2

Section 8129 of FECA provides that an individual who is without fault in creating or accepting an overpayment is still subject to recovery of the overpayment unless adjustment or recovery would defeat the purpose of FECA or would be against equity and good conscience.¹⁰ The waiver or refusal to waive an overpayment of compensation by OWCP is a matter that rests within OWCP's discretion pursuant to statutory guidelines.¹¹

Recovery of an overpayment will defeat the purpose of FECA if such recovery would cause hardship to a currently or formerly entitled beneficiary because the beneficiary from whom OWCP seeks recovery needs substantially all of his or her current income, including compensation

⁷ FECA Bulletin No. 97-09 (February 3, 1997).

⁸ 20 C.F.R. § 404.409.

⁹ *Supra* note 6.

¹⁰ 5 U.S.C. § 8129; 20 C.F.R. §§ 10.433, 10.434, 10.436, and 10.437; *see A.S.*, Docket No. 17-0606 (issued December 21, 2017).

¹¹ *See Robert Atchison*, 41 ECAB 83, 87 (1989).

benefits, to meet current ordinary and necessary living expenses, and the beneficiary's assets do not exceed a specified amount as determined by OWCP.¹² Additionally recovery of an overpayment is considered to be against equity and good conscience when an individual who received an overpayment would experience severe financial hardship in attempting to repay the debt or when an individual, in reliance on such payment or on notice that such payments would be made, gives up a valuable right or changes his or her position for the worse.¹³

OWCP regulations provide that the individual who received the overpayment is responsible for providing information about income, expenses, and assets as specified by OWCP. This information is needed to determine whether or not recovery of an overpayment would defeat the purpose of FECA or be against equity and good conscience. The information is also used to determine the repayment schedule, if necessary.¹⁴ Failure to submit the requested information within 30 days of the request shall result in a denial of waiver of recovery, and no further request for waiver shall be considered until the requested information is furnished.¹⁵

ANALYSIS -- ISSUE 2

The Board finds that OWCP properly denied waiver of recovery of the \$1,465.20 overpayment of compensation.

As OWCP found appellant without fault in the creation of the overpayment, waiver must be considered, and repayment is still required unless adjustment or recovery of the overpayment would defeat the purpose of FECA or be against equity and good conscience.¹⁶ Appellant, however, had the responsibility to provide the appropriate financial information to OWCP.¹⁷

In its preliminary determination dated March 16, 2018, OWCP clearly explained the importance of providing the completed overpayment questionnaire and financial information, including copies of income tax returns, bank account statements, bills, pay slips, and any other records to support income and expenses. It advised appellant that it would deny waiver if he failed to furnish the requested financial information within 30 days. Appellant, however, did not respond nor did he complete a Form OWCP-20 or submit any financial information necessary for OWCP to determine if recovery of the overpayment would defeat the purpose of FECA or if recovery would be against equity and good conscience.

¹² 20 C.F.R. § 10.436(a)(b). For an individual with no eligible dependents the asset base is \$4,800.00. The base increases to \$8,000.00 for an individual with a spouse or one dependent, plus \$960.00 for each additional dependent. Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Initial Overpayment Actions*, Chapter 6.200.6(a)(1)(b) (June 2009).

¹³ *Id.* at § 10.437(a)(b).

¹⁴ *Id.* at § 10.438(a); *Ralph P. Beachum, Sr.*, 55 ECAB 442 (2004).

¹⁵ *Id.* at § 10.438(b).

¹⁶ *Id.* at § 10.436.

¹⁷ *Id.* at § 10.438.

Consequently, as appellant did not submit the information required under section 10.438 of OWCP's regulations, which was necessary to determine his eligibility for waiver, OWCP properly denied waiver of recovery of the overpayment.¹⁸

LEGAL PRECEDENT -- ISSUE 3

Section 10.441 of OWCP's regulations provides that when an overpayment has been made to an individual who is entitled to further payments, the individual shall refund to OWCP the amount of the overpayment as the error is discovered or his attention is called to the same. If no refund is made, OWCP shall decrease later payments of compensation, taking into account the probable extent of future payments, the rate of compensation, the financial circumstances of the individual, and any other relevant factors, so as to minimize any hardship.¹⁹

ANALYSIS -- ISSUE 3

The Board finds that OWCP properly required recovery of the overpayment by deducting \$488.40 every 28 days from appellant's continuing compensation.

As noted, appellant did not complete the Form OWCP-20 nor submit financial information as requested prior to the final June 15, 2018 decision. The overpaid individual is responsible for providing information about income, expenses, and assets as specified by OWCP.²⁰ When an individual fails to provide requested financial information, OWCP should follow minimum collection guidelines designed to collect the debt promptly and in full.²¹ As appellant did not submit information to OWCP as requested, the Board finds that there is no evidence in the record to show that OWCP erred in directing recovery of the \$1,465.20 overpayment at the rate of \$488.40 every 28 days from appellant's continuing compensation.²²

On appeal, appellant alleges that he cannot afford the \$448.00 deducted from his continuing compensation payments. He did not, however, provide financial documents to support his argument. Accordingly, there is no evidence of record to establish that OWCP erred in directing recovery at the rate of \$488.40 every 28 days from appellant's continuing compensation.

CONCLUSION

The Board finds that appellant received an overpayment of compensation in the amount of \$1,465.20, that OWCP properly denied waiver of recovery of the overpayment, and that it properly required recovery at the rate of \$488.40 every 28 days from appellant's continuing compensation.

¹⁸ See *S.B.*, Docket No. 16-1795 (issued March 2, 2017).

¹⁹ 20 C.F.R. § 10.441(a); see *Donald R. Schueler*, 39 ECAB 1056, 1062 (1988).

²⁰ *Id.* at 10.438.

²¹ *Frederick Arters*, 53 ECAB 397 (2002); Federal (FECA) Procedure Manual, *supra* note 12 at Chapter 6.200.4(c)(2) (May 2004).

²² See *E.K.*, Docket No. 18-0587 (issued October 1, 2018).

ORDER

IT IS HEREBY ORDERED THAT the June 15, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 19, 2019
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board